

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JEROME F. CHAMBERLAIN,

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 84-199

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice of violation and civil penalty of \$25 for open air burning of natural vegetation in violation of the State Clean Air Act, came on for hearing before the Pollution Control Hearings Board; Lawrence J. Faulk, Vice Chairman (presiding), on August 14, 1984, at Vancouver, Washington. The hearing was informal and electronically recorded. Gayle Rothrock, Board Chairman, and Wick Dufford, Lawyer Member, have reviewed the record and listened to the recording of the hearing.

Appellant Mr. Chamberlain appeared and represented himself.

1 Respondent Southwest Air Pollution Control Authority (SWAPCA) appeared
2 by its attorney David Jahn.

3 Witnesses were sworn and testified. Exhibits were examined. From
4 the testimony heard and the exhibits examined, the Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, pursuant to RCW 43.21B.260, has filed with the Board a
8 certified copy of its revised Regulation I, adopted April 17, 1984,
9 containing respondent's regulations and amendments thereto, which are
10 noticed.

11 II

12 On June 27, 1984, in the afternoon, appellant and members of his
13 immediate family allowed or caused an outdoor fire of natural
14 vegetation at 7209 NE 62nd Avenue in Vancouver, Washington.

15 III

16 The fire was confined in a burn barrel and burned for
17 approximately fifteen minutes. A citizen telephoned respondent agency
18 and requested an air quality specialist go to the scene of the fire.

19 IV

20 Respondent SWAPCA's inspector, responding to the citizen complaint
21 arrived at the fire site at 2:15 p.m., observed the burned remains of
22 natural vegetation and discussed the regulation of open burning with
23 appellant. This included a discussion of the dates of the spring burn
24 season declared by SWAPCA, a season which started March 1 and ended
25 June 15.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 84-199

Testimony by respondent indicated that the radio, newspaper, and television media were notified of the burn season dates immediately before the season's commencement and again just prior to its termination. The appellant was issued and signed a field notice of violation of Section 400-035 of Regulation I of SWAPCA.

Y

On July 2, 1984, appellant was issued a regular notice of violation and a letter from the executive director of respondent agency levying a \$25 fine which he received July 3, 1984. From this appellant appealed to this Board on July 30, 1984.

VI

Appellant did not have a permit to conduct open burning.

Appellant indicated that he did not know there was a burn season in the southwest region of the state of Washington. He did not attempt to obtain permission to burn natural vegetation because he simply did not know that it was illegal to conduct such burning without a permit on the date of the fire at issue.

VII

Appellant has received no prior violations of SWAPCA Regulation I.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

1 CONCLUSIONS OF LAW

2 I

3 The Legislature of the State of Washington has enacted the
4 following policy on outdoor fires:

5 It is the policy of the state to achieve and maintain
6 high levels of air quality and to this end to
7 minimize to the greatest extent reasonably possible
8 the burning of outdoor fires. Consistent with this
9 policy, the legislature declares that such fires
10 should be allowed only on a limited basis under
11 strict regulation and close control. (RCW 70.94.740.)

12 Pursuant to this and other legislative authority, the respondent has
13 adopted its Regulation I, Section 400-035, which provides in relevant
14 part:

15 No person shall ignite, cause to be ignited, permit
16 to be ignited, or suffer, allow, or maintain any open
17 fire within the jurisdiction of the Authority, except
18 as provided in this Regulation...(2) Open burning may
be done under permit:

19 (b) No permit shall be issued unless the Control
20 Officer is satisfied that: (i) no practical
21 alternate method is available for the disposal of the
22 material to be burned (the Authority has a written
23 Open Outdoor Fire Policy describing times, areas and
24 kinds [of] permitted open fires)....

25 II

26 Respondent agency established that this regulation was, in fact,
27 violated. The burn season is a time during which general permission
to engage in limited outdoor burning of certain materials is granted
by the authority. However, the fire in question occurred after the
close of the declared burn season. Appellant did not contest either
that an outdoor fire had been conducted or that he had no permit to
conduct it.

1 III

2 Ignorance of open burning regulations is no defense to a citation
3 for their violation. J.J. Welcome & Sons v. PSAPCA, PCHB No. 42
4 (1971).

5 IV

6 RCW 70.94.431 provides for the imposition of a civil penalty
7 against "any person who violates any of the provisions of chapter
8 70.94 RCW or any of the rules and regulations of the department or the
9 board." The violation of SWAPCA, Regulation I, Section 400-035, falls
10 within this language, and, therefore, assessment of a penalty in this
11 instance was lawful.

12 VI

13 SWAPCA publicized the period during which limited burning could be
14 conducted. Its program was well enough understood for a citizen to
15 complain about appellant's fire. There was no showing that appellant
16 was misled or misinformed by SWAPCA. The penalty of \$25 is
17 substantial in light of the nature and duration of this single
18 violation. However, in consideration of SWAPCA's purpose to secure
19 compliance generally, the amount of the penalty assessed is not
20 manifestly unreasonable.

21 VII

22 Though, under the facts, the penalty should be upheld, SWAPCA's
23 open burning regulations are not a model of clarity. The agency would
24 assist the public and help to avoid appeals like this one if its rules
25 were to explain the relationship of the burn season to the permit

1 program. Moreover, in the highly regulated context of present-day
2 life, the public interest would be better served if efforts to inform
3 citizens of restrictions were more than perfunctory in matters so
4 basic to the management of households as open burning.

5 VII

6 Any Finding of Fact which should be deemed a Conclusion of Law is
7 hereby adopted as such.

8 From these Conclusions of Law, the Pollution Control Hearings
9 Board enters this

ORDER

The notice of violation and \$25 civil penalty is affirmed.

DONE this 31st day of October, 1984.

POLLUTION CONTROL HEARINGS BOARD

See Dissenting Opinion
LAWRENCE J. FAULK, Vice Chairman

Gayle Rothrock
GAYLE ROTHROCK, Chairman

Wick Dufford
WICK DUFFORD, Lawyer Member

1 DISSENTING OPINION - LAWRENCE J. FAULK

2 I write separately because the majority opinion does not require
3 the Southwest Air Pollution Control Authority (SWAPCA) to publish its
4 burn season regulations in a way that is clear to the citizens.

5 This case involved open burning of natural vegetation.

6 It surely is not the Board's responsibility to tell a local air
7 pollution control agency how to perform its duties. But it has been
8 apparent for a long time to this Board member that the method of
9 publishing the burn season regulations is not adequate. When the only
10 public notice of the burn seasons is by voluntary publication and
11 broadcast by the media, then confusion is created among residents of
12 the county.

13 It is the duty of governmental regulatory agencies to make its
14 rules clear and understandable to the public. When agencies fail in
15 this duty, citizens should not be punished for failure to comply.

16 Richard Peters v. SCAPCA, PCHB No. 354 (1973).

17 It may be that it is a citizen's responsibility to keep abreast of
18 all the multitude of laws and regulations which govern his life as the
19 majority states; but surely it is also the responsibility of a
20 regulatory governmental agency to make its rules clear and
21 understandable to its citizens.

22 I believe the SWAPCA should be required to adopt the burn seasons
23 as part of their Regulation I and publish same; and (2) require the
24 inspectors to carry copies of this part of Regulation I with them for
25

26 DISSENTING OPINION
27 PCHB No. 84-199

1 easy distribution to the citizens; and (3) introduce this handbill in
2 all future proceedings before this Board.

3 The burn seasons have never been introduced in any of these
4 procedures as evidence. In other words, the Board has never seen a
5 piece of paper that states the dates of the burn seasons.

6 As the majority states "the public interest would be better served
7 if efforts to inform citizens of restrictions were more than
8 perfunctory in matters so basic to the management of households as
9 upon burning."

10 For these reasons I would vacate the notices of violation and
11 strike the \$25 fines.

12 POLLUTION CONTROL HEARINGS BOARD

13  10/31/84
14
15 LAWRENCE U. FAULK, Vice Chairman
16
17
18
19
20
21
22
23
24
25

26 DISSENTING OPINION

27 PCHB No. 84-199